No. 87 586

IN THE

Supreme Court of the United States

OCTOBER TERM 1987

GABRIEL A. MAALOUF and SUSAN MAALOUF,
Petitioners,
vs.
MICHEL G. HADDAD and PIERRE HELOU,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

GABRIEL A. MAALOUF, Pro Se
and as attorney in fact for
Susan Maalouf
4973 Paradise Road
Las Vegas, Nevada 89119

QUESTIONS PRESENTED

1. Was the order of the Ninth Circuit Court issued on April 6, 1987, awarding the instant respondents HADDAD and HELOU $5.000 in sanctions and damages for filing an appeal which the Court previously held as meritorious, proper.

2. When or Should Sanctions be imposed against Pro Se Appellants?

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PARTIES

GABRIEL A. MAALOUF and SUSAN M. MAALOUF, Petitioners herein, by and through Gabriel A. Maalouf, Pro Se and as attorney in fact for Susan M. Maalouf, pray that a writ of certiorari issued to review the Order and Judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on the 1st day of June, 1987, and attached hereto as pages 1 and 2 of Appendix A.

The parties are identified in the caption.

OPINION AND ORDER BELOW APPEALED FROM

The U.S. Court of Appeals for the Ninth Circuit issued no opinion in this matter, the order granting sanctions against the instant Petitioners and dismissing the appeal as frivolous, is attached in Appendix A hereto as pages 3 and 4, and the Order denying relief from sanctions is attached as Appendix A hereto as pages 1 and 2.

JURISDICTION

The Order of the U.S. Court of Appeals for the Ninth Circuit, Appendix A hereto, pages 1 and 2, was entered on the 1st day of June, 1987.

The jurisdiction of this Court is invoked pursuant to Article III, Section 3, of the Constitution of the United States; 28 U.S.C. Sections 1254 and 1651; And Supreme Court Rule 17 (1) (a) .

Jurisdiction is further invoked pursuant to this Court's decision of JARECKI v. G. D. SEARLE & COMPANY, 367 U.S. 303, standing for the proposition that the Court will grant certiorari to assure uniform application of federal laws among the several circuits and districts, and to resolve conflicts in decisions of the different circuits.

Jurisdiction of this honorable Court is further invoked pursuant to the decision of the honorable Court in HOUSE v. MAYO, 324 U.S. 42, reh den 324 U.S. 886, standing for the proposition that the Court will issue a writ of certiorari to a court of appeals, to review the order of the lower appellant court in declining to allow an appeal to it, and will also reach the question of the merits sought to be raised on the appeal in the lower court.

CONSTITUTION AND STATUTORY PROVISIONS

1.

Constitution

Article III. Section 3 - United States Constitution

2.

Statutory

Rule 11 - Federal Rules of Civil Procedure

Rule 38 - Federal Rules of Appellate Procedure

Supreme Court Rule 17 (1) (a)

28 U.S.C. §§ 1254, 1651

BACKGROUND FACTS

In 1976, the Petitioners and Respondents entered into certain negotiations wherein the Respondents requested permission to be allowed to invest in certain business enterprises of the Petitioners.

After a lengthy negotiation, an agreement was reached whereby the parties would invest in a corporation named Big H Corporation, for the purposes of franchising, both nationally and internationally, the tradename, Fairway Rent-a-Car, owned by the Petitioners. This particular business enterprise is a car rental business.

On or about January 1979, after the Big H Corporation was formed, the Petitioners obtained the right to purchase a piece of real property located at 3269½ Las Vegas Boulevard South, Las Vegas, Nevada.

The Respondents, discovering the Petitioner's purchase of this property, requested permission to invest with the Petitioners in said property for the purpose of using this real estate as a corporate headquarters for Big H Corporation.

On March 17, 1979, an agreement was entered into wherein the Respondents and Petitioners agreed that the Respondents would acquire a two-thirds' ownership interest in the real property, and the Petitioners would retain a one-third ownership.

Shortly thereafter a third agreement was entered into between the Respondents and Petitioners setting forth the responsibility of the respective parties as to the financing of the Big H Corporation. Under this agreement the Respondents were to own 20 percent of the corporate stock, and the Petitioners were to own 60 percent of the stock, in exchange for the assignment of the tradename belonging to the Petitioners. The Respondents were committed to provide up to an additional $1,000,000 in working capital to the corporation.

Shortly after these agreements were made, Clark County, Nevada vacated the commercial access to the real property on Las Vegas Boulevard South, and a number of legal actions were instituted by the Petitioners.

Upon learning of all these various legal actions, and the legal infirmities dealing with this real property, the Respondents apparently decided to extricate themselves from the situation.

The belief of the Petitioners that the Respondents entered into a covert agreement with the Petitioners' personal attorney, PATRICK CLARY, ESQ., who was also acting in the capacity of corporate counsel for Big H Corporation, to formulate a plan under with the Respondents did extricate themselves from the agreements which they had entered into hereinbefore.

Based upon this covert agreement, the Respondents and Mr. Clary drew some additional documents which Mr. Clary pursuaded or coerced the Petitioners into signing and which shifted all the liability onto the shoulders of the Petitioners while allowing the Respondents to maintain the equitable value of any assets which may have remained in either the real estate or the Big H Corporation.

In January 1985, the Respondents started foreclosure proceedings on the real property located at Las Vegas Boulevard South under a deed of trust that had been issued by the Petitioners because of the agreement formulated by Mr. Clary and the Respondents.

Upon learning of the foreclosure proceedings, Petitioner Gabriel A. Maalouf flew to Paris, France and entered into an oral agreement with the Respondents under which if the Petitioners were to erect a three-faced billboard on the real property, the Respondents would withdraw the foreclosure proceedings and the billboard would be rented with the rentals going to the Respondents as payment for and on the trust deed.

The Petitioner did in fact erect a three-faced billboard on the real property, however, the Respondents continued with the foreclosure proceedings and on May 10, 1985, the Petitioners filed a legal action in the Nevada State Court for breach of contract.

On May 17, 1985, the Petitioners filed a motion for a restraining order and an order to show cause for the issuance of a preliminary injunction in the State Court action. However, because the Petitioners could not post the sizeable cash bond required by the state court, the preliminary injunction and temporary restraining order were refused by the state court.

This being the case, and foreclosure being imminent, and not wishing to declare a personal chapter eleven, the Petitioners transferred the real property by quit claim deed to a corporation owned by the Petitioners for several years. The name of this corporation was the SUMO Corporation.

On May 24, 1985, the SUMO Corporation filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court, and also filed an adversary proceeding against the instant Respondents and against Mr. Clary in the Bankruptcy Court.

On February 24, 1986, after the Respondents had continually argued bad faith in the transfer of the property to the SUMO Corporation, the Bankruptcy Court lifted the automatic stay afforded by 11 U.S.C. Section 362 (a), in the SUMO Bankruptcy.

In doing so the Bankruptcy Court granted to the Petitioners 72 hours in which to obtain a stay in Unnited States District Court and take an appeal from the order lifting the automatic stay. Being unable to obtain this stay in such a short period of time, and with the Respondents again threatening imminent foreclosure, the Petitioners transfered the real property back to themselves on February 27, 1986.

On the same day, February 27, 1986, the Petitioners filed a personal Chapter 11 bankruptcy petition under 11 U.S.C. Section 101 et seq, and in doing so brought into a bankruptcy estate, property with value in excess of $1.5 million.

The Respondents obtain an order lifting the automatic stay in the petitioners' personal bankruptcy within 24 hours, and a foreclosure sale was held two hours thereafter.

Both the instant Petitioners and the SUMO Corporation filed appeals with the Bankruptcy Appellate Panel for the Ninth Circuit Court, however, on June 12, 1986, the Bankruptcy Appellate Panel dismissed the SUMO appeal as being moot, and July 16, 1987 dismissed the instant Petitioners' appeal as being moot because no stay had been obtained and the property had been sold in a foreclosure sale.

On July 10, 1986, the SUMO Corporation filed a notice of appeal with the Ninth Circuit Court of Appeals, and on August 13, 1986, your instant Petitioners filed their notice of appeal with the Ninth Circuit Court of Appeals.

On January 23, 1987, the Court dismissed the SUMO appeal as being moot, the property having been transfered to the instant Petitioners.

Also, on January 23, 1987, the U.S. Ninth Circuit Court of Appeals dismissed your instant Petitioners appeal for lack of standing, however, in the Order (Appendix A hereto, pages 5 and 6) the Ninth Circuit stated that it did not believe that the sale of the property to the instant Respondents mooted the appeal, citing In re position SPRINGPARK ASSOCIATION, 623 F.2d 1377 (8th Cir. 1986) as authority for that petition.

On or about February 4, 1987, your instant Petitioners filed a motion to reconsider dismissing the appeal and a request for a hearing en banc, based on the alleged lack of standing in the January 23, Order.

On March 4, 1987, the Respondents filed a motion for an award of sanctions in the 9th Circuit Court, and on April 6, 1987, the 9th Circuit granted the requested sanctions. (Appendix A pages 3 and 4).

The instant Respondents requested relief from said order, however, on June 1, 1987, the U.S. 9th Circuit Court of Appeals denied the motion for relief from sanctions. (Appendix A pages 1 and 2).

It is this June 1, 1987 order that the instant Petitioners now pray for a writ of certiorari to issue from this Court considering.

LEGAL ARGUMENT

Federal Rule Eleven, Federal Rules of Civil Procedure, was amended in August of 1983, and since then more than 1,000 Rule 11 decisions regarding sanctions have been issued by the various lower courts. American Bar Association Journal, August 1, 1987, "The Trouble with Rule 11," page 87.

The appellate counterpart of Rule 11 FRCP, is Rule 38 of the Federal Rules of Appellate Procedure, and there have been in excess of 300 Rule 38 FRAP orders issued by the various circuit courts in the last two years.

Recently, in the case of GOLDEN EAGLE DISTRIBUTING CORPORATION v. BURROUGH CORPORATION, 801 F.2d 1531 (9th Cir., 1986) the U.S. Ninth Circuit Court, in reversing a Rule Eleven order of the U.S. District Court for the Central District of California, stated that the position of the various courts of appeals on Rule 11 sanctions, was diversified, and this Honorable Court has as of yet to pronounce any guidelines for the ordering of sanctions under Rule 11. The Ninth Circuit Court further went on to state that it desired and hoped in the near future this Honorable High Court would consider this matter.

Recently several circuits have held that sanctions against pro se appellants should be awarded only with great caution. The most succinct discussion on this matter is found in LONSDALE v COMMISSIONER, 661 F.2d 71, 32 FR Serv.2d 1252 (5th Cir., 1981), wherein the court stated:

> "Court will indulge appellants' pro se status and refuse to involk sanctions of Rule 38 despite the fact that contentions in tax dispute are stale, long settled, and frivolous."

However, in the Ninth Circuit Sanctions are frequently imposed against pro se appellants, at least in the instant case and the case of WOOD v McEWEN, 644 F.2d 797 (8th Cir. 1981), cert
den. 455 U.S. 942.

For a more in depth discussion of sanctions in pro se appeals see GENERALLY: 67 A.L.R. Fed. 319 (especially § 5).

This instant case presents an excellent set of facts and legal circumstances for the purposes of considering the issuance of sanctions under Rule 11 of the FRCP or Rule 38 of FACP.

In this case we have the Ninth Circuit Court contradicting its own order. Therefore, in the order of January 23, 1987 (Appendix A hereto pages 5 and 6), the Ninth Circuit Court apparently did not consider the instant Petitioners' appeal to be frivolous, and even went further to state that it was possible that the dismissal of the appeal by the Bankruptcy Appellate Panel was not proper as it was not moot. In so deciding this, the Ninth Circuit cited its earlier case of In re SPRINGPARK ASSOCIATES, 623 F.2d 1377 (9th Cir., 1980). However, the same Circuit Court Panel on April 6, 1987, dismissed this same appeal as being frivolous.

Because of this contradiction by the Appellate Panel, the dismissal of the Petitioners' appeal substantially fails to uniformly apply the rules of law previously established by the Ninth Circuit Court. See In re SPRINGPARK ASSOCIATES, supra. Furthermore, because of the uncertainty as to when sanctions should be ordered, and the lack of uniformity among the various circuits in applying sanction rules, GOLDEN EAGLE DISTRIBUTING CORPORATION v BURROUGH CORPORATION, supra this Court stated that it will grant certiorari to resolve these types of conflicts. HEFLIN v U.S. 358 U.S. 415; PENNSYLVANIA RAILROAD COMPANY v O'ROUKE, 344 U.S. 334.

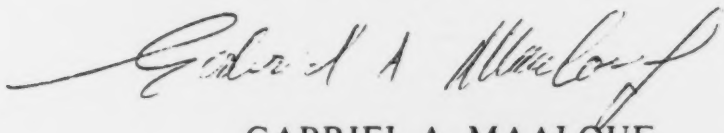
Finally, if this Court wishes to follow the procedure established in HOUSE v MAYO, 324 U.S. 42, and consider all the questions raised on the appeal at the Bankruptcy Appellate Panel and the Ninth Circuit below, the Petitioner will rebrief these issues for this Court's edification.

CONCLUSIONS

For the foregoing reasons, it is respectfully submitted by the instant Petitioners that the Petition for Writ of Certiorari should be granted to allow ths Court to consider as a question of first impressions, exactly what are the guidelines for the imposition of sanctions in either Rule 11 F.R.C.P. Lower Court proceedings or in Rule 38 F.R.A.P. Appellate proceedings.

DATED this 28th day of August 1987.

Respectfully submitted,



GABRIEL A. MAALOUF
4973 Paradise Road
Las Vegas, Nevada 89119
Petitioner, Pro Se

CERTIFICATION OF SERVICE

I hereby certify that I am over 21 years of age, a citizen of the United States, and not a party to nor interested in this action.

I further certify that I placed a true copy of the foregoing Petition for Writ of Certiorari, in the U.S. Mail, postage fully prepaid and thereto affixed and addressed as follows:

John M. Netzorg, Esq.
501 South Rancho Drive #G-46
Las Vegas, Nevada 89107

Attorney for Respondents

Dated this 8th day of OCTOBER, 1987.

Randall G. Haley

Randall G. Haley

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re:	
GABRIEL A. MAALOUF and SUSAN MAALOUF,	No. 86-2450 Bankruptcy No. BK-LV-86-412
Debtors	
MICHEL G. HADDAD and PIERRE HELOU,	
Appellees,	
v.	
GABRIEL A. MAALOUF and SUSAN MAALOUF,	
Plaintiffs-Appellants.	ORDER

Before: FLETCHER, WIGGINS and BRUNETTI, Circuit Judges

Appellants' motion for relief from sanctions is DENIED.

Gabriel Maalouf
4973 S. Paradise Road
Las Vegas, NV 89118

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re:	
GABRIEL A. MAALOUF and SUSAN MAALOUF,	No. 86-2450 Bankruptcy No. BK-LV-86-412
Debtors	
MICHEL G. HADDAD and PIERRE HELOU,	
Plaintiffs-Appellees,	BKCY No. BK-LV-86-412
vs.	
GABRIEL A. MAALOUF and SUSAN MAALOUF,	
Defendants-Appellants.	ORDER

FILED

APR 6 1987

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Before: FLETCHER, WIGGINS and BRUNETTI, Circuit Judges

Appellees' motion for award of sanctions is granted.

The appeal is frivolous. Appellant shall pay to Appellee the sum of $5,000 as damages for filing this appeal. Fed. R. App. Proc. 38.

Appellee is also awarded double costs. Id.

Gabriel Maalouf
4973 S. Paradise Road
Las Vegas, NV 89118

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re:	)	
	)	No. 86-2450
	)	
GABRIEL A. MAALOUF and SUSAN MAALOUF, Debtors	)	BAP# NV-86-1233
	)	
MICHEL G. HADDAD and PIERRE HELOU, Plaintiffs-Appellees,	)	
	)	
vs.	)	
	)	
GABRIEL A. MAALOUF and SUSAN MAALOUF, Plaintiffs-Appellants.	)	ORDER

Before: FLETCHER, WIGGINS and BRUNETTI, Circuit Judges

Appellees' motion to dismiss the appeal as moot is denied. Although the foreclosure sale was not stayed and the property was sold, appellees' purchase of the property precludes us from determining at this time that the Bankruptcy Appellate Panel properly dismissed as moot the appeal taken to it. See In re Springpark Association, 623 F.2d 1377 (9th Cir. 1980).

The appeal is dismissed for lack of standing, however. Appellants could not take an appeal in this matter because the bankruptcy court appointed a trustee, and the trustee acquired the rights of the bankruptcy estate.

The court wishes to express its concern over the apparently unseemly conduct of counsel for appellants in this case and in the related of In re Sumo Corporation: Helou v. Sumo Corporation, No. 86-6218, dismissed by separate order on this date. The record reflects that the property in question was transferred by these appellants to Sumo Corporation after relief was denied by the state court, that Sumo Corporation immediately filed for bankruptcy, that immediately after the bankruptcy court lifted the automatic stay in the Sumo bankruptcy the property was transferred from Sumo Corporation to appellants, and that appellants then filed for bankruptcy. Jeffrey Samuels, Esquire, represented these appellants and Sumo Corporation. The court will not countenance abuse of process.

The Clerk will forward a copy of this order to Ann Bersi, Executive Director, State Bar of Nevada, 834 Willow Street, Reno, Nevada.

MoCal 1/5/87